MOK HAN LIANG

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & 2 ORS.

HIGH COURT MALAYA, MALACCA
DATO' SURIYADI HALIM OMAR J
[CRIMINAL APPEAL NO. 44-30-1995]
5 MARCH 1996

HABEAS CORPUS: *Applicant detained under s. 3(3)(c) Emergency (Public Order and Prevention of Crime) Ordinance 1969 - Whether designated officer required to study report of detaining officer - Grounds of detention bearing hall mark of violence falling within second limb of s. 4(1) of the Ordinance - Deputy Minister leaving intact first limb but deleting second limb - Effect of - Errors on the face of document setting out grounds of detention - Effect of - Whether Deputy Minister acted mechanically or arbitrarily in signing detention order.*

On 23 May 1995 at 8.15 am the designated officer received from a police officer of or above the rank of Deputy Superintendent a report on the circumstances and detention of the applicant and at 9 am on the same day the 1st respondent, the Deputy Minister of Home Officers, received a report from the designated officer respecting the arrest of the applicant pursuant to s. 3(3)(c) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 ("the Ordinance"). The 1st respondent subsequently issued an order directing that the applicant be detained for a period of two years beginning 23 June 1995.

Attached to this detention order were the grounds of the detention which bore the hall mark of violence reflecting gangsterism. If the grounds were to be believed and accepted the acts of the applicant would fall squarely under the second limb of s. 4(1) of the Ordinance i.e. the limb which envisaged the preponderance of violence.

The facts showed that in issuing the detention order the Deputy Minister had left intact the 1st limb of s. 4(1) but had deleted the 2nd limb.

The facts further showed that the second ground attached to the detention order referred to an attack by the applicant with other members of his gang on a restaurant in Seremban on 7 July 1994. However, it was not denied that the applicant just hours earlier was at the Thailand-Malaysia border. These apart, the sixth ground referred to an attack by the applicant and his gang on 27 August 1995. However, the document on which the charges were typed out was dated 23 June 1995

At the hearing of the applicant's application for *habeas corpus* Counsel raised the issues that:

(i) the designated officer prior to the handing over of the report of the arrest of the applicant to the 1st respondent had not applied his mind to that report;

(ii) on the face of the document, the detention order was defective, as not only were the grounds vague and misleading but applied to the wrong limb of s. 4(1); and

(iii) the 1st respondent had issued the order mechanically or arbitrarily and had failed to apply his mind before issuing the detention order.

Held:

[1] Although s. 3(3)(c) of the Ordinance is silent on the point, there is a requirement that the designated officer should study the report before handing the report to the Deputy Minister. The designated officer, a Senior Assistant Commissioner of Police, was way above the relevant Deputy Superintended of Police in rank. The Court could not accept the unusual interpretation whereby a more senior officer could not overrule a junior officer in rank and must merely act as a conduit for the latter. His role was more than a mere conduit in the pipe line of administration. He was there to assist the Deputy Minister and in the process to ensure that the rights of the detainee were protected and not abused. His role as the last seiving officer in Police Department must be interpreted in that light as otherwise the Legislature could have provided that the report be sent direct to the Deputy Minister without having to go through an intervening officer.

[2] However, in this case the designated officer did affirm to the effect that he did apply his mind after studying the report and this fact was uncontradicted by any rebuttal affidavits.

[3] Were there to be doubts as to the particular limb of s. 4(1) the Minister applied his mind to or whether he applied his mind at all the detainee would reap the benefit of the doubt. In this case all the six grounds bore the hall mark of violence reflecting gangsterism. If the grounds were to be believed and accepted the acts of the applicant would fall squarely under the second limb i.e the limb which envisaged the preponderance of violence. The erroneous deletion of this second limb by the Deputy Minister did lend credence to the assertion or contention that the latter had not applied his mind sufficiently when signing the detention order thus acting arbitrarily and mechanically.

[4] The second and sixth grounds of detention were suspect.

(i) The Court could not imagine that the detainee who hours earlier was at the Thailand-Malaysia border could have been involved in a well-planned attack on a restaurant in Seremban.

(ii) Ground 6 read that on 27 August 1995 the detainee with the members of his gang had attacked another place. The Court found this ground absolutely ludicrous as the document on which the charges were typed out was dated 23 June 1995 whilst the relevant date was months to come. The Deputy Minister's explanation that the actual date was 27 August 1994 and not 27 August 1995 implied that the Deputy Minister had not focused his attention fully to the grounds of the charges but had merely signed the document.

[5] The Deputy Minister had made numerous errors which only meant that either he did not make the relevant studies of the facts or had merely acted mechanically or arbitrarily.

[Habeas corpus application allowed. Detainee to be released forthwith]

Cases referred to:

Tan Yap Seng v. Ketua Polis Negara & 2 Ors. [1991] 2 CLJ 1400 ***(foll)***

Lee Guan Seng v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor. and Another Application [1992] 2 MLJ 878 ***(refd)***

Wong Fook Nyen v. Timbalan Menteri Dalam Negeri M'sia & 2 Ors. [1988] 2 CLJ 274 ***(refd)***

Yap Hai Sing v. Menteri Hal Ehwal Dalam-Negeri, Malaysia & Anor. [1995] 3 AMR 2120 ***(dist)***

Menteri Hal Ehwal Dalam Negeri & Anor. v. Lee Gee Lam [1993] 2 AMR 49 3471 ***(foll)***

Henry a/l Arumanathan v. Deputy Minister of Home Affairs & 2 Ors. [1995] 1 CLJ 683 ***(dist)***

Lim Hock Siew & Ors. v. The Minister of the Interior & Defence [1968] 2 MLJ ***(foll)***

Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors. [1976] 2 MLJ 83 ***(foll)***

PP v. Koh Yoke Koon [1988] 2 MLJ 301 ***(foll)***

Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors. v. Datuk James Wong Kim Min [1976] MLJ 245 ***(foll)***

Karpal Singh s/o Ram Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia & Anor. [1988] 1 MLJ 469 ***(refd)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act, 1985

Emergency (Public Order and Prevention of Crime) Ordinance 1969, s. 3(3)(c), 4(1)

For the plaintiif - M. Krishanamorthi; M/s. Morthi, Segaran & Co.
For the respondent - Ahmad Sazilee bin Abdul Khairi, SFC

JUDGMENT

Suriyadi Halim Omar J:

On 23 May 1995 the Honourable Datuk Megat Junid bin Megat Ayub the Deputy Minister of Home Affairs Malaysia received a report with the relevant information pertaining to the arrest of the applicant as provided under s. 3(3)(c)

of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (hereinafter referred to as "the ordinance"). Having satisfied himself that the applicant threatened the security of the public within the scope of the ordinance, subsequently issued an order directing that the applicant be detained for a period of two years beginning 23 June 1995. Attached with this detention order were the grounds of the detention. In encl. (17) para. 7 of his affidavit the Deputy Minister affirmed that he only issued the order of detention after having been satisfied of the charges. He denied the allegation that his decision was mechanically or arbitrarily made.

For easy reference I lay down the "Tuduhan-Tuduhan Yang Perintah Itu Berasaskan" which reads as follows:

1. Bahawa kamu pada awal bulan April 1994 di persimpangan Jalan Tun Dr. Ismail dan Jalan Penjara, Seremban, bersama-sama seorang rakan geng telah merekrut seorang lelaki Cina masuk Geng Wah Kee 18 dan mengambil bayaran wang pendahuluan sebanyak RM4.90.

2. Bahawa kamu pada 7 July 1994 jam lebih kurang 10.00 malam, bersama-sama sekumpulan ahli geng telah menyerang sebuah restoran Kim Kee di Taman Rasah Jaya, Seremban dan memecahkan perabot dan kerusi meja.

3. Bahawa kamu pada pertengahan bulan Julai 1994 di Pekan Nilai, Seremban, kamu telah mengugut seorang lelaki Cina dengan sepucuk pistol supaya lelaki Cina ini menyerahkan sebuah buku pasport teman wanitanya. Pasport diserahkan.

4. Bahawa kamu pada 8/9 July 1994 jam lebih kurang 8.00 malam di restoran Punca Emas, Seremban, kamu telah mengadakan 'table talk' dengan mangsa yang telah diserang oleh ahli-ahli geng kamu pada 7 July 1994.

5. Bahawa kamu pada 24 August 1994 jam lebih kurang 10.20 malam di tempat hiburan Jade Solid Gold Park, Lot 12212, Taman AST, Seremban, bersama-sama sekumpulan ahli geng telah meminta wang perlindungan sebanyak RM4,900 daripada seorang peniaga. Wang tidak dibayar.

6. Bahawa kamu pada 27 August 1995 jam lebih kurang 12.55 malam, bersama-sama sekumpulan ahli geng dengan bersenjatakan kayu dan besi telah menyerang tempat hiburan Jade Solid Gold Park, di Lot 12212, Taman AST, Seremban dan memecahkan perabot, minuman serta papan tanda kedai."

The facts as highlighted in encl. (17) referred to as "MJMA1" (lampiran E) was signed by one Zabidah binti Safar on 23 June 1995, on the Ministerial direction of the Deputy Minister of Home Affairs.

The two relevant provisions for purposes of this case are ss. 3(3)(c) and 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. Section 3(3)(c) permits the detention of the detainee beyond the thirty day period so long as the prerequisites of the provision are complied with. This section reads:

> 3(3) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty-days without an order of detention having been made in respect of him under s. 4(1):
>
> Provided that:
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> (a)
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> (b)
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> (c) he shall not be detained for more than thirty days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General of Police or to a police officer designated by the Inspector-General in that behalf who shall forthwith report the same to the Minister.

The Deputy Minister's role as in this case takes centre stage after the stage of the handing over of the report of the detainee from either the Inspector-General of Police or by any police officer designated by the Inspector-General, generally referred to as the designated officer. Section 4(1) of this relevant Ordinance reads:

> 4(1) If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order directing that that person be detained for any period not exceeding two years.

The detainee's Counsel referring to encl. (2) as affirmed by his elder brother one Richard Mok Lit Check merely stressed three grounds at the hearing, namely:

i) the designated officer prior to the handing over of the report of the arrest of the detainee to the Deputy Minister had not applied his mind to that report;

ii) on the face of the document, the detention order was defective, as not only were the grounds vague and misleading but applied to the wrong limb of s. 3(3)(c); and

iii) the Deputy Minister had issued the order mechanically or arbitrarily and had failed to apply his mind before issuing the detention order.

On a casual reading of encl. (18) para. 1.4 it was not contradicted that Zaid bin Haji Yahya the designated officer had received the report on 23 April 1995 at 8.15 a.m. with the sole purpose of ensuring a further detention of thirty days. The designated officer reported to the Deputy Minister at 9 a.m. on the same day. The learned Counsel was at pains to stress that it was improbable that the designated officer could have managed to peruse the report

and apply his mind accordingly within the available forty five minutes before reporting to the Deputy Minister. Section 3(3)(c) is omninously silent as to the requirement of the designated officer to study the reports before handing the report to the Deputy Minister. This requirement of the necessity to study the file by the designated officer came about as a consequence of the case of *Tan Yap Seng v. Ketua Polis Negara & 2 Ors.* [1991] 2 CLJ 1400. Justice Edgar touching on the affidavit of the designated officer who merely submitted the report forthwith without more to the Deputy Minister had this to say at p. 1401 (H right hand column):

> ... My view is that it would, *prima facie*, be wrong for the designated officer to submit his report to the Minister immediately. By "immediately", I mean automatically without any interval of time, for had he done so, it could be argued, with considerable justification, that he could not have directed his mind to the particular circumstances of the detainee's case. In other words, he would lay himself open to the attack that he had acted as a mere rubber stamp.

This *dictum* found favour in *Lee Guan Seng v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor. & Another Application* [1992] 2 MLJ 878. Vincent Ng JC (as he then was) justified further the correctness of this dictum by distinguishing the phrase "shall forthwith report" as provided in s. 3(3)(c) with that of "shall forthwith submit such report that he had received from the police officer". This further elucidation by Vincent Ng J convinced me that despite the ominous silence as to the requirement to apply his mind prior to reporting to the Deputy Minister the interpretation of the provision as originally propounded by Edgar Joseph Jr J (as he then was) was very sound. On further perusal of s. 3(3)(c) it could not be denied that the police had the discretion whether to extend or otherwise the thirty days period having regard to the word which reads "may be detained in police custody ...". Should the police decide to detain him for a period exceeding the thirty days then the conditions of subsection (c) must be adhered to. Adherence meant the Deputy Superintendent having to report to the Inspector General of Police or to the designated officer who shall forthwith report the circumstances of the arrest and detention of the detainee to the Minister. The designated officer a Senior Assistant Commissioner of Police in the hierachy of the police authority was way above the relevant Deputy Superintendent of police in rank. After receipt of the report the question that would come to mind was, if the designated officer considered the detention beyond the thirty days period as inappropriate or unnecessary could he determine the matter insitu or was he powerless whereby he must mechanically submit the report to the Deputy Minister? If the former were to be correct surely it entailed reading the contents of the report. After considering all the legal niceties with regard to the law of *habeas corpus* and understanding the police hierachy and discipline the Court could not accept the unusual interpretation whereby a more senior officer could not overrule a junior officer in rank and must merely act as a conduit for the latter. His role was more than a mere conduit in the pipe line of administration.

He was there to assist the Deputy Minister and in the process to ensure that the rights of the detainee were protected and not abused. This role as the last seiving officer in the police department must be interpreted in that light as otherwise the Legislature could have provided that the report be sent direct to the Deputy Minister without any other intervening officers. The *dictum* of Lim Beng Choon J in *Wong Fook Nyen v. Timbalan Menteri Dalam Negeri M'sia & 2 Ors.* [1988] 2 CLJ 274 at p. 281 though not necessarily direct in point would be highly relevant and useful on this point. In that case the detainee was held under the Dangerous Drugs (Special Preventive Measures) Act 1985 and the relevant dictum revolved on the issue of delayed investigations. Lim Beng Choon J said:

> ... All that I am saying is that the underlying policy of the Act is to ensure that (i) the police should not be allowed to abuse the power conferred under ss. 3(i) and (ii) there must sufficient and well-founded materials placed before the Minister before he can arrive at a proper and correct decision. In short the Act does not allow any arbitrary detention based on tenuous grounds and hence Parliament in passing the Act devised the elaborate investigations that must be carried out and acknowledge that such investigations might be time consuming.

Returning to the issue of insufficiency of time for the designated officer to study the report the learned Counsel for the applicant cited the case of *Yap Hai Sing v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor.* [1995] 3 AMR 2120 for comparison. In that case the designated officer had a mere twenty minutes before reporting to the Deputy Minister. Similarly as regards the current case he canvassed that the forty five minutes was insufficient for Zaid bin Hj. Yahya to apply his mind. On a perusal of the case of *Yap Hai Sing* and *Lee Guan Sing* the facts in those cases differed with that of the present one. I found for a fact as per encl. (18) para. 1.5 that Zaid bin Hj. Yahya did affirm to the effect that he did apply his mind after studying the report. This fact was uncontradicted by the Ministry of Home Affairs by any rebuttal affidavits thus reducing the factor of time in this case to be irrelevant. What was significant was that this designated officer did apply his mind to a case scenario which detracted from the facts of the above two cases.

The two other grounds as canvassed by the learned Counsel of the detainee were co-related and as such will be dealt with simultaneously.

The learned Counsel for the applicant ventilated that there was an erroneous deletion of the relevant limb when the first limb was left intact *vis-a-vis* the facts. He submitted that the facts as elicited from the detention order clearly fitted the second limb of s. 4(1) of the Ordinance. He elucidated further that the first limb provided for the detention of any person from acting in any manner prejudicial to public order whilst the second was for the purpose of suppression of violence or the prevention of crime involving violence. He supported this interpretation by citing the case of *Menteri Hal Ehwal Dalam Negeri & Anor. v. Lee Gee Lam* [1993] 2 AMR 49 p. 3471 where the

Supreme Court upheld the finding of the learned Judicial Commissioner Vincent Ng Kim Khoay. Vincent Ng J had allowed the respondents's application for *habeas corpus* on the common ground that the respective orders issued by the Deputy Minister of Home Affairs were defective due to non compliance with the provisions. The disjunctive interpretation of s. 4(1) of the Ordinance by Vincent Ng J was also endorsed by the Supreme Court. The learned Judicial Commissioner (as he then was) interpreted that section to allow the Minister to detain:

> (a) a person who has acted in any manner prejudicial to public order (or, presumably social order in our society), which encompasses a whole gamut of variegated offences such as smuggling, running illegal lotteries, preaching religious heresy, or advocating communist or racist ideology, all of which do not necessarily involve violence (first limb); and
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> (b) a person, if it is necessary for the suppression of violence or the prevention of crimes involving violence, obviously an appropriate provision for curbing gangsterism, gangland warfare and gang violence which necessarily involve violence or the use of violence, (for the second limb).

This endorsement by the highest Court in Malaysia recognised the distinction between the first and the second limb as intended by the Legislature and any vagaries would face the wrath of the judiciary. Lee Gee Lam was released when the Court found for a fact that both the limbs were left unscathed by the Minister thus giving an impression that he was to be detained under one or both of the limbs. L.C. Vohrah J at p. 3476 reiterated:

> We would conclude by saying that in determining the propriety or legality of a detention order made under s. 4(1) the satisfaction of the Minister has to be considered in the light of the limbs under which he acted. The determination of the question as to whether he addressed his mind to the relevant limb or for that matter to both the limbs in making his detention order is a procedural matter and if it is shown that there is some doubt as to which particular limb the Minister applied his mind to or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the detenu.

The above *dictum* sealed the nail that were there to be doubts as to the particular limb the Minister applied his mind to or whether he applied his mind at all the detainee would reap the benefit of the doubt. Unfortunately my task was made slightly more difficult when the case of *Henry a/l Arumanathan v. Deputy Minister of Home Affairs & 2 Ors.* [1995] 1 CLJ 683 was referred to by the Senior Federal Counsel. The facts showed that Henry a/1 Arumanathan had applied violence culminating in the death of a man on 11 March 1994 in Alor Star. Going by the delienation of the limbs as propounded by the case of *Lee Gee Lam* surely the detainee would have fallen squarely into the second limb, but this was not to be so as the Minister of Home Affairs had applied the first limb. The learned Judicial Commissioner

refused to interfere with the decision of the Minister and disallowed the application. Much as I would agree with the reasoning of the learned Judicial Commissioner in *Henry a/l Arumanathan*, as regards the current case I had to part company as there were other facts which indicate that the Deputy Minister had not applied his mind at all leading to the erroneous usage of the wrong limb. In our present case all the six grounds bore the hall mark of violence reflecting gangsterism at its best as intimidation, violence and the usage of dangerous weapons were common in the commission of the offences. If the grounds were to be believed and accepted the acts of the detainee would fall squarely under the second limb i.e. the limb which envisaged the preponderence of violence. The erroneous deletion of this second limb by the Deputy Minister did lend credence to the assertion or contention that the latter had not applied his mind sufficiently when signing the detention order thus acting arbitrarily and mechanically.

The other reasons which led the Deputy Minister to be misled could be amply illustrated by analysing the grounds of detention which were suspect and groundless. Ground 2 asserted that on 7 July 1994 the detainee together with other members of his gang had pounced on a restaurant in Seremban causing much damage in the process. Yet on a perusal of encl. (3) as reflected by Exhibit MLC3 the detainee factually had on 6 July 1994 either just entered Thailand or Malaysia. I found myself bewildered as I could not imagine that the detainee who hours earlier was at the Thailand Malaysia border could have been involved in a well planned attack on a restaurant on 7 July 1994. The photostated copies of the detainee's passport proved that he was a frequent visitor to Thailand. These facts were not challenged.

On top of that, grounds 6 reads that on 27 August 1995 at about 12.55 a.m. the detainee with the members of his gang had attacked another place and also causing much damage to the premises. I found this ground absolutely ludicrous as the document (Lampiran E) on which the charges were typed out was dated 23 June 1995 whilst the relevant date was months to come. The Deputy Minister as per encl. (23) attempted to rectify this strangeness of facts by alleging in para. 5 that the actual date was the 27 August 1994 and not the 27 August 1995 as corroborated by Zabidah binti Safar as per encl. (22). This assertion unfortunately is disastrous to the case of the Ministry of Home Affairs as these grounds were attached to the detention order unamended and had been handed to the detainee on 23 June 1995 at 3.40 p.m.

Zabidah binti Safar missed the error at the first stage whilst the Deputy Minister at the second tier. This negligence on the part of the Deputy Minister implied that the Deputy Minister had not focused his attention fully to the grounds of the charges but had merely signed the document. If the detainee had received a defective order it would mean that the detainee had not been informed correctly of the grounds of the detention. This defective document

had prejudiced his rights as he had the right to know the correct grounds and charges. Admitting the mistake at this stage was too late in the day as the fundamental rights of the detainee had been compromised.

With the above facts I could not but conclude that the Deputy Minister had made numerous errors which only meant that either he did not make the relevant studies of the facts or had merely acted mechanically or arbitrarily. To reiterate, subsequently after the defective detention order suffered from typographical error it could not correct the situation as the order had already been given to the detainee. On this point over the issue of errors detected on the face of the records I sought solace from the dictum of Wee Chong Jin CJ in *Lim Hock Siew & Ors. v. The Minister of the Interior & Defence* [1968] 2 MLJ p. 219 at p. 221 column B right when he said:

> If authority is needed that a writ of *habeas corpus* will issue where an order, which is relied upon as justification for the detention of a person, is bad on its face, I need only refer to the judgment of Lord Wright in *Greene v. Secretary of State for Home Affairs* at p. 403 where he states:
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> > It would be superfluous to point out that the basis of the conclusion here adopted is that the order and statement are good on their face that is, that they show a competent exercise of a lawful authority. If an order or warrant is bad on its face, it can give no legal justification for the imprisonment. Thus in *Bushell's* case [1670], Vaugh, 135, a commitment which showed that it was to punish persons for giving a verdict of which the Court did not approve, and which was said to be *contra plenam et manifestam evidentiam et contra directionam curiae in materia legis*, was held to be bad as showing a cause which was not lawful ....

Nearer to home in *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.* [1976] 2 MLJ 83 at p. 84 Abdoolcader J (as he then was) opined:

> ... An order of detention based on irrelevant grounds is invalid and if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of the relevant legislation under which the detention is ordered and in that sense are foreign thereto, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed (*Ranmeshwar Shaw v. District Magistrate, Burdwan & Anor.*).

At the end of the day if any doubts existed it must prevail in favour of the detainee and the case of *PP v. Koh Yoke Koon* [1988] 2 MLJ 301 at p. 302 lent support to this principle when Hashim Yeop A Sani SCJ said:

> Detention not in accordance with law is inconsistent with the fundamental right guaranteed under Article 5(1) of the Constitution. Where a law deals with detention, there are abundant authorities to show that the provisions of such

law must be construed strictly and, in the case of doubt, the Court should lean in favour of the subject. See also *Andrew s/o Thamboosamy v. Superintendent of Pudu Prison, Kuala Lumpur*.

Earlier to this the same principle was expressed in *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors. v. Datuk James Wong Kim Min* [1976] MLJ 245 at 250 (column I right hand) by Lee Hun Hoe CJ Borneo in the following terms:

> Preventive detention is the detention of a person without trial as opposed to punitive detention where a person is detained after a trial in a Court of law in which he is proved to have committed an offence punishable under certain provisions of the penal law. Preventive detention is therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the Court. In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of habeas corpus is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. See *Ex Parte Johannes Choeldi & Ors.*

To summarise this case I decided that the respondent had rebutted the allegation of the designated officer failing to apply his mind prior to reporting to the Deputy Minister. Unfortunately this was not the case pertaining to the detention order *per se* as well as to the factor as to whether the Deputy Minister did apply his mind before signing the detention order. I found for a fact many glaring errors which could have been detected by a cursory examination but escaped detection at the second stage when the Deputy Minister was about to sign the order. Over and above that carelessness which compromised the rights of the detainee the wrong limb was applied indicating further the casual and cavaliar manner of the Deputy Minister over this case (see also *Karpal Singh s/o Ram Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia & Anor.* [1988] 1 MLJ 469). I accordingly allowed the *habeas corpus* application and ordered the detainee to be released forthwith.

Reported by Jasmesh Kaur